

UNFILED

DATE: 9-21-04

BY: CWG

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PETEDGE, INC.,

Plaintiff,

v.

THE KYJEN COMPANY, INC.

Defendant

CIVIL ACTION

Civil Action No. 04 10807 MEL

PRE-TRIAL SCHEDULING ORDER

The Court hereby orders entry of this Pre-Trial Scheduling Order pursuant to
Fed.R.Civ.P.26(f).

1. PREDISCOVERY DISCLOSURES

Pursuant to Local Rule 26.2(A), the parties will exchange the information
required by Fed. R. Civ. P. 26(a)(1) by September 13, 2004.

2. DISCOVERY PLAN

The Court hereby enters the following Discovery Plan:

a. PetEdge, Inc.

Discovery will be needed regarding alleged infringement, evidence of
confusion, third party uses and the subject matter of each of the parties' claims and defenses in
connection with allegations concerning the defendant's alleged trademarks, trade dress and
copyrights, including Copyright Registration Nos. VA 999-576, VA 1-015-297, VA 1-248-235
and VA 1-248-236, also including the validity of said trademarks, trade dress and copyrights;

the enforceability of said trademarks, trade dress and copyrights; and damages.

The Kyjen Company, Inc.

Kyjen expects to conduct discovery regarding the extent of PetEdge's sales of its accused products and its profits on those sales. Kyjen also expects to conduct discovery regarding the process by which PetEdge designed the accused products and any consumer confusion regarding the source of PetEdge's products.

b. All discovery is to be completed by February 28, 2005 except with respect to discovery regarding experts.

c. The parties are limited to forty Interrogatories to any other party. Answers thereto are due thirty days after service. The parties may exceed forty Interrogatories to a party with leave of the Court.

d. The parties are limited to one hundred requests for admission to any other party, and the authenticity of documents may be established through requests for admission. Responses thereto are due thirty days after service in accordance with the Federal Rules.

e. The parties are limited to a total of sixty individual requests for production of documents. Responses thereto are due thirty days after service in accordance with the Federal Rules.

f. The parties are limited to ten depositions by the plaintiff and ten depositions by the defendant, including depositions of fact witnesses and expert witnesses, without leave of court. A deposition of up to 7 hours taken pursuant to Rule 30(b)(6) shall count as one deposition.

g. Expert witness reports under Rule 26(a)(2) are due from the parties by

March 31, 2005. Depositions of experts will be completed by April 30, 2005.

3. SCHEDULE FOR FILING OF MOTIONS

Motions to compel and/or other relief will be filed no later than forty-five days after respective responses to discovery are due, or forty-five days after receipt of respective discovery responses.

Motions in connection with depositions will be filed no later than forty-five days following receipt of the transcript of the respective deposition.

Motions, including summary judgment motions, but excluding motions regarding the conduct of trial, will be filed by May 30, 2005.

4. OTHER ITEMS

a. The Court will schedule a Pre-Trial Conference no later than thirty days after ruling on dispositive motions.

b. This matter has been referred to U.S. District Court Judge Mazzone for mediation. The parties will be notified regarding the time and place designated for the proceeding.


c. The plaintiff expects that trial will take approximately two full weeks while the defendant believes the parties should be able to complete trial in one week.

d. The parties do not consent to trial by a Magistrate Judge.

All dates herein are subject and subordinate to the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the District of Massachusetts, and Court Orders, including Orders pursuant to any motions by the parties.

SO ORDERED

Dated:



Judge Morris E. Lasker
U.S. District Court for the District of Massachusetts